

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:07CV460-1-MU

ANTHONY SHARP,  
)  
Plaintiff,  
)  
v.  
)  
GLAXOSMITH KLINE PHARMACEUTICAL,  
)  
Defendant.  
)

## ORDER

**THIS MATTER** comes before the Court for an initial review of Plaintiff's Complaint pursuant to 42 U.S.C. § 1983 (Doc. No. 1); Plaintiff's Motion to Proceed In Forma Pauperis (Doc. No. 1.); and Plaintiff's Motion to Appoint Counsel (Doc. No. 2), all filed October 31, 2007.

In his Complaint Plaintiff alleges that Defendant Glaxosmith Kline violated his civil rights by manufacturing a product it “knew had side effect or added risk to a individual’s life . . . .” (Compl. at p. 1.) Plaintiff alleges that approximately one year after he was prescribed Enapril he began experiencing chest pains and that in October 2007 he was diagnosed with serious heart murmur. Plaintiff seeks twenty million dollars in damages.

Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil litigation without the prepayment of fees or costs. 28 U.S.C. § 1915(a)(2). However, pursuant to 28 U.S.C. § 1915(e), a prisoner shall not bring a civil action or appeal a judgment in a civil action without the prepayment of fees or costs if the prisoner has, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim. The only exception to this filing prohibition is if the prisoner is in imminent danger of

serious physical injury. 28 U.S.C. § 1915(g).

Plaintiff has asked to be allowed to proceed in forma pauperis in this matter. (Doc. No. 1). This Court takes judicial notice of the fact that Plaintiff has had at least three prior prisoner civil actions in federal court that were dismissed because they were found to be frivolous or because they failed to state a claim. See Sharp v. Cueva, E.D. Cal. Civ. Case. No. 02-1686 FDC (GGH) (Jan 5, 2005 Order dismissing Complaint for failure to state a claim); Sharp v. Mason, E.D. Cal. Civ. Case. No. 03-1354 EJG (DAD)(Sept. 5, 2003 Order dismissing Complaint for failure to state a claim); Sharp v. Arcamone, E.D. Cal. Civ. Case No. 04-0595 DFL (GGH)(Mar. 21, 2005 Order dismiss Complaint for failure to state a claim). Plaintiff's present Complaint does not assert that he is in imminent danger of serious physical injury. Consequently, because Plaintiff, a prisoner, has three "strikes" against him, his Motion to Proceed In Forma Pauperis is denied and his Complaint is dismissed pursuant to 28 U.S.C. § 1915(g).

**IT IS THEREFORE ORDERED THAT:**

1. Plaintiff's Motion to Proceed In Forma Pauperis is **DENIED** pursuant to 28 U.S.C. 1915(g); and
2. Plaintiff's Complaint is **DISMISSED** without prejudice for failure to pay the civil filing fee required by 28 U.S.C. § 1914(a).

Signed: November 5, 2007



Graham C. Mullen  
United States District Judge



